

Notice of Allowability

Application No.

10/622,147

Examiner

Beverly M. Flanagan

Applicant(s)

BONNER ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Application -- filed July 17, 2003.
2. ☒ The allowed claim(s) is/are 1-14 and 20-24.
3. ☒ The drawings filed on 17 July 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 9/15/03 & 11/22/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


BEVERLY M. FLANAGAN
PRIMARY EXAMINER

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Attorney Jeff Holshell on February 25, 2005.

The application has been amended as follows:

In the specification:

At page 1, line 2, after "2003", insert —now U.S. Patent No. 6,837,848—

In the claims:

Cancel claims 15-19.

** Upon comparison of the claims of the instant invention with the claims of U.S. Patent No. 6,837,848 (which matured from the parent application, Serial No. 10/342,932), the examiner noted that claims 15-19 of the instant application appeared to be identical to claims 15-19 of U.S. Patent No. 6,837,848. In order to advance prosecution of the instant application, applicant's representative agreed to cancel the claims.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: None of the prior art references teach or fairly suggest the device and method of the instant

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invention as recited in claims 1-14 and 20-24. The most relevant prior art references will be discussed below in regard to the claims of the instant invention.

The art is well aware of the use of suction to draw in tissues so that surgical procedures (e.g., biopsies, excising of tissues) can be performed (see Yamamoto et al., U.S. Patent No. 6,059,719 at Figure 5; Wiegerinck, U.S. Patent No. 4,723,940 at Figure 1 and Belanger, U.S. Patent No. 4,662,376 at Figures 3a and 3b). However, these prior art devices do not disclose first and second support arms with suction pads. The art is also aware of devices used for immobilization of cardiac tissue during heart surgery, where the devices comprise two suction arms with a space in between for surgical incisions (see Borst et al., U.S. Patent No. 6,464,630 at Figure 13). However, this prior art device does not disclose the support arms in combination with a tubular access sleeve having a working channel for the passage of surgical tools and a suction channel for passage of the first and second support arms. Thus, the combination of a tubular access sleeve with a working lumen and a suction tool lumen, where the suction tool comprises a tool trunk and first and second support arms extending distally from the tool trunk, where the first and second support arms have first and second support arms are deployable distally from the working lumen, as recited in independent claims 1, 8 and 20 of the instant invention is neither taught nor disclosed by the prior art. Furthermore, the prior art does not disclose the method of accessing an anatomic space comprising the steps of providing a tubular access sleeve with a working lumen and a suction tool lumen, disposing a suction tool through the suction tool lumen, advancing the sleeve through the body, advancing the suction tool distally to extend the first and second

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suction pads and applying suction to grasp the outer tissue layer surface. Accordingly, claims 1-14 and 20-24 of the instant invention are allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Wednesdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Beverly M. Flanagan
Primary Examiner
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